General Teamsters Local Union No. 174, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousmen and Helpers of America *and* Allied Employers, Inc. Case 19-CB-3873

November 18, 1982

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On August 5, 1981, Administrative Law Judge David G. Heilbrun issued the attached Decision in this proceeding. Thereafter, counsel for the Employer and the General Counsel filed exceptions and briefs, and counsel for Respondent filed an answering brief and a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision, in light of the exceptions and briefs, and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge found that Respondent Teamsters Local 174 did not unlawfully refuse to execute the collective-bargaining agreement which had been ratified by a majority of the other participating unions because Respondent never manifested an unequivocal intent to be bound by association bargaining. We disagree.

The record shows that for several years Respondent, herein also called Local 174, and Teamsters Locals 117 and 313 bargained individually with Allied Employers, Inc., an association of wholesale grocers and soft drink bottlers in the Seattle and Tacoma, Washington, area, for associationwide bargaining units of drivers or warehousemen in the grocery and soft drink industries, respectively. In 1974, after Respondent had entered into an association contract for the wholesale grocery industry, one of the other locals refused to ratify the contract and negotiated a different agreement with more favorable terms. As a consequence, the association agreed to reopen Respondent's contract and all executed or reexecuted contracts with the more favorable terms. Based on that experience, the unions met prior to the 1977 grocery negotiations and agreed to bargain jointly, with a single spokesman, with ratification voting on the same day. Accordingly, all of the unions appeared at Respondent's initial grocery negotiations where Teamsters International Vice President Weinmeister advised the association representatives that the unions would engage in "coordinated" bargaining rather than separate bargaining as in the past. When Association Counsel King questioned the propriety of participation by all the unions, Union Counsel Roberts cited *N.L.R.B.* v. *General Electric Company*, 385 U.S. 533 (1967), as authority for that proposition, and union spokesmen further elaborated that such bargaining contemplated "one big strike or one big settlement." The association acquiesced and proceeded to negotiate an agreement which all the unions ratified. The same parties met shortly thereafter to negotiate a contract for the soft drink industry, agreed to utilize the same bargaining structure, and produced an agreement ratified by all but Respondent, which nevertheless executed the contract, pursuant to the unions' internal agreement to base rejection or ratification on a majority of the votes cast by their respective members in an overall voting group.[1]

At the outset of the 1980 grocery negotiations involved herein, Weinmeister announced that his executive assistant, Grami, would serve as the unions' spokesman, and that the unions would again engage in "coordinated bargaining like the last time." He further responded to an association inquiry as to what the situation would be if only a majority of the Teamsters locals ratified, by stating that that would be "an internal union problem." Respondent's official, Cooper, who attended most, if not all, of the bargaining sessions, informed Grami during a union caucus that Grami was not authorized to take bargaining positions for Local 174. Cooper also advised the association representatives that he reserved the right to a separate vote on any association offer, but that this was consistent with the prior "coordinated" bargaining format. On August 18, 1980, after approximately 17 bargaining meetings, when issues had crystalized and strike authorizations had been voted, the association issued a "Last and Final Position." The unions held ratification votes on August 17, and ratification was voted by all except Respondent's membership, which voted overwhelmingly against ratification. Respondent thereupon struck and the other locals declined to support the strike. Respondent discontinued its strike on August 21 and on September 16 the written association contract was tendered to Respondent for signature, which Respondent declined to execute.

We find, contrary to the Administrative Law Judge, that the association neither was privy to Cooper's withdrawal of Grami's actual authority to

[1] The union agreement was not divulged to the association which was handed separate tabulations of the ratification voting by units.

represent Respondent nor had any basis for construing Cooper's reservation of his right to a separate vote on association offers as a change from the established procedure. Further, it is clear from the foregoing evidence that the parties' coordinated bargaining format in 1977, and again in 1980, contemplated a binding contract upon ratification by a majority of the unions, and that Respondent tacitly concurred therein based on its acquiescent participation in the negotiations, its execution of a prior contract over its members' rejection, and its failure to notify the association at any time of its rejection of the majority ratification principle. We note that the above findings are predicated solely on credited or uncontradicted record evidence, and not on the Administrative Law Judge's findings and credibility resolutions which he based on his subjective characterizations of various witnessess' motives and perceptions relating to events and internal Teamsters rivalries which are outside of the record.[2]

Accordingly, we conclude that by refusing on and after September 16, 1980, to execute and honor the terms of the majority-ratified association contract, Respondent violated Section 8(b)(3) of the Act.

CONCLUSIONS OF LAW

1. Allied Employers, Inc., is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce and business activities which affect commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Teamsters Local Union No. 174, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All drivers, helpers, extra drivers, and bull drivers employed by the employers and based at their facilities in King County, Washington, excluding supervisors and guards defined in the Act and all other employees, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all material times, Respondent has been and is the exclusive representative of the employees within the unit found appropriate for purposes of collective bargaining.

5. By failing and refusing on and after September 16, 1980, to execute the contract ratified by the majority of union locals with Allied Employers, Inc., Respondent has refused to bargain collectively with Allied Employers, Inc., within the meaning of Section 8(b)(3) and Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent violated Section 8(b)(3) of the Act, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent will also be directed to give retroactive effect to the contract and make whole any employees covered by the contract for any financial losses sustained by them as a result of Respondent's unlawful refusal to sign the contract,[3] with backpay computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and interest thereon as provided in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, General Teamsters Local Union No. 174, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Seattle, Washington, its officers, agents, and representatives, shall:

1. Cease and desist from refusing to bargain collectively with Allied Employers, Inc., on behalf of employees within the unit herein found appropriate for the purposes of collective bargaining, by refusing on and after September 16, 1980, to execute the contract ratified by the majority of union locals, or from engaging in any like or related conduct in derogation of its statutory duty to bargain.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) If requested by Allied Employers, Inc., or its designated representatives, execute the contract submitted to Respondent by Allied Employers, Inc., on September 16, 1980, and make whole any employees covered by the contract for any monetary losses they may have suffered by Resondent's refusal to sign the contract in the manner set forth in the section of this Decision and Order entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment

[2] In view of our findings herein, it is unnecessary to rule on the General Counsel's and Charging Party's exceptions to the Administrative Law Judge's credibility findings and on their motion to strike alleged extraneous evidence from the record pertaining to his remarks. Our careful review of the record reveals that they are wholly unsubstantiated and, accordingly, we disavow them.

[3] We leave to the compliance stage determination of the specific financial losses sustained by employees as a result of Respondent's unlawful refusal to sign the contract.

records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."[4] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by an official representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Furnish to the Regional Director for Region 19, signed copies of the attached notice for posting by Allied Employers, Inc., if willing, at its office or member facilities where notices to employees are customarily posted. Copies of said notice, to be furnished by the Regional Director for Region 19, shall, after being duly signed by Respondent as indicated, be forthwith returned to the Regional Director for disposition by him.

(e) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[4] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Allied Employers, Inc., as the exclusive representative of employees within the unit described below, by refusing to sign the contract ratified by a majority of the union locals, which was submitted to our representative for signature on September 16, 1980.

WE WILL NOT engage in any like or related conduct in derogation of our statutory duty to bargain.

WE WILL, if requested by Allied Employers, Inc., execute the contract submitted to us for signature by our representative on September 16, 1980, and WE WILL make whole any employees covered by the contract for any monetary losses they may have suffered by our refusal to sign the contract, including interest thereon. The appropriate unit for purposes of collective bargaining is:

> All drivers, helpers, extra drivers, and bull drivers employed by the Employers and based at their facilities in King County, Washington, excluding supervisors and guards as defined in the Act and all other employees.

GENERAL TEAMSTERS LOCAL UNION NO. 174, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARHEOUSEMEN AND HELPERS OF AMERICA

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge: This case was heard at Seattle, Washington, on April 2, 3, and 22, 1981, based on a complaint alleging that General Teamsters Local Union No. 174, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, violated Section 8(b)(3) and 8(d) of the Act by failing and refusing to sign a certain collective-bargaining agreement assertedly reached during a course of dealings that originated with "ground rules for negotiation" of March 1980 and culminated in ratification voting on August 17, 1980.

Upon the entire record,[1] my observation of witnesses, and consideration of post-hearing briefs, I make the following:

FINDINGS OF FACT AND RESULTANT CONCLUSION OF LAW

Allied Employers, Inc., is a multiemployer association of wholesale grocery firms operating in the greater Seattle area. As of early 1980, these were American-Strevell, Inc., Associated Grocers, Inc., J. C. Wright Sales Co., Leslie Salt Co., S & W Find Foods, Inc., Safeway Stores, Inc., The Amalgamated Sugar Co., and Tradewell Stores, Inc. An additional member is, and for years has been, West Coast Grocery Co. located in nearby Tacoma. A group of Teamsters locals represent the warehouse employees and drivers of these several companies, including small distribution points beyond Tacoma itself. Local 174 is a large Teamsters local of the Pacific Northwest, having aproximately 100 labor contracts covering approximately 7,000 members in retail, wholesale, soft drink, construction, cartage, and other industries. As germane here it represents drivers and driver-helpers employed by association members in King County (greater Seattle), and is shown to have been party to successive "wholesale grocery" contracts since

[1] Certain errors in the transcript are hereby noted and corrected.

at least 1968. This relationship reflects one of the three bargaining units that are involved in the case. A second of these is an associationwide unit of warehouse employees represented by several Teamsters affiliates, the most prominent of which are Local 117 for greater Seattle and Local 599 for West Coast Grocery in Tacoma.[2] The final bargaining unit of note is that for drivers employed by West Coast Grocery, these being represented by Teamsters Local 313.

Robert Cooper has been secretary-treasurer and chief executive officer of Respondent since January 1, 1977. Richard King has been employed at the association since 1967 and its secretary-manager since January 1, 1974. The food industry and its suppliers are merely the "main group" of some 300 employers overall that comprise this body.[3] King is a graduate attorney with earlier industrial relations experience, and has been the wholesale grocery employer's chief spokesman in negotiations since those of 1974.[4] Arnold Weinmeister is secretary-treasurer of Local 117, president of Teamsters Joint Council No. 28 for the vicinity, and a vice president of the International Union. William Roberts is a practicing attorney in Seattle with a law firm that has long represented Local 117 and the Joint Council and, in addition, has periodically represented Local 174.

As a prelude to the 1977 round of negotiations, Weinmeister contacted Roberts and arranged a meeting of Teamsters representatives at which Cooper was present. The purpose was to design a new approach to negotiations for the wholesale grocery industry as to which Local 174 would have traditionally been the lead union in opening talks. Weinmeister's idea was to have the representatives of other unions sitting throughout, and he wanted legal advice on whether this would survive objection by the association. Roberts causes his office to verify certain case precedent, and with this told Weinmeister that the approach was arguably valid and had the additional potential benefit of avoiding "the rigmarole and foolishness" of three separate sessions since such could all be condensed into a single ongoing effort.

This preplanning spanned February 28–March 1, 1977, the latter date being when Local 174 negotiations were scheduled to commence with a morning session. The delegation of Teamsters personnel comprised of Roberts,[5] Weinmeister, Cooper, and representatives from Locals 313 and 599 appeared at the association's office where the employer bargaining team was present. It was comprised of King as spokesman, along with Angelo Bruscas, director of personnel and industrial relations for Associated Grocers, Harold Ravenscraft, industrial relations manager for Tradewell Stores (formerly, until 1974, on the association staff), and others. King testified that he first questioned whether, as expected, the meeting was for the purpose of negotiating only with Local 174. He recalled both Weinmeister and Roberts doing "most of the talking" in reply, and after alluding to the problems of 1974 asking in that context whether the employer would consider "entering into coordinated barganing." King asked them for details and was told that it meant all the locals would sit together at the table with only one spokesman. Initially this was intended to be Weinmeister. King further recalled being told that upon arrival at "one [cost] settlement" including any change in fringe benefits applying equally to all three contracts, then all locals would conduct their ratification votes at the same time with a "majority [of the locals] rules" principle in effect and only a "union problem," never an "employer problem," to obtain from such a procedure. King testified further that the speakers sought to induce agreement to this approach by emphasizing that it would lead to either "one big contract or one big strike."

King is generally corroborated by both Bruscas and Ravenscraft. The former testified concerning March 1, 1977, that after "several caucuses . . . trying to clarify what approach the Union was making regarding coordinating the bargaining between 174, 117, 599, 313," the gist of this was Weinmeister saying they intended to proceed with coordinated bargaining to avoid a repetition of the 1974 experience. Bruscas termed management's reaction as initially negative, but further probing discussion enused with Roberts and Weinmeister continuing to advocate coordinated bargaining. Bruscas' abiding recollection of key ending remarks from Weinmeister was the process contemplated "something like one big strike or one big agreement or one big settlement." Bruscas added that this meeting was confined exclusively to discussion of procedure and that after heated discussion of principles between King and Roberts, the employers finally accepted the notion after being given to understand that "if the majority of the units voted for the agreement, we would have an agreement . . . if the majority of the votes didn't vote for the agreement, we would have a strike."

[2] There are presently three small warehouse locals (down from four until recently) whose members constitute the identifiable satellite employing locations of association members. Other than participation of such members in certain pooled contract ratification voting there is no significance to the case because of these entities, and henceforth their roles shall be disregarded.

[3] Par. 2 of the complaint alleges that as "banded together" the various retail grocery chains had annual gross sales in excess of $500,000 and caused goods and materials valued in excess of $50,000 to be purchased and delivered directly from suppliers outside the State of Washington. Respondent's answer to the complaint pleaded a lack of sufficient knowledge with respect to the truth of such allegations and therefore denied them. Such a style of pleading is expressly authorized by Board rules, and in fact once insufficient knowledge of alleged facts is advanced this statement alone serves as a denial. Board Rules and Regulations, Series 8, as amended, Sec. 102.20

While the General Counsel has not cured this jurisdictional void, it is evident from the inherent nature of the food distribution industry, the scope of operations here, and the number of employees involved, that the Board's retail standard of a $500,000 annual gross volume of business coupled with more than *de minimis* flow across state lines is amply met. I thus infer the obvious and find that association and its members are employers engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act and, otherwise, that Respondent Local 174 is a labor organization within the meaning of Sec. 2(5).

[4] In that year an apparent final settlement with Local 174 had to be reopened for further concessions after members of Local 117 refused to ratify a contract and ultimately obtained benefits that would, but for the unprecedented and "turmoil"-ridden reopening, have departed from traditional parallels between the two Teamsters groups as to an overall cost package.

[5] At this point Roberts was expressly representing Respondent in terms of Weinmeister, as an established client, having so commissioned him because it was sister Local 174 negotiations that were at hand.

Ravenscraft testified that the meeting of March 1, 1977, was devoted entirely to discussion of the structure of bargaining and resulted in an understanding that it would proceed in coordinated fashion. Ravenscraft recalled initial employer resistance to the idea and some caucusing. His principal testimony is that after this shaking out, Weinmeister and Roberts jointly advised the employers that they should continue thinking of "separate contracts with locals just as we had had in the past, but that we would either have one settlement or one big strike."

William Grami is executive assistant to Weinmeister as the current stint of a long Teamsters career in which he was otherwise most recently on the Western Conference staff and previously had been secretary-treasurer of a warehouse local. In early 1977 his particular job was director of the food division for the Western Conference, and in that capacity he was assigned to particpation in the wholesale grocery negotiations about to commence in Seattle. Grami was called as a witness by the General Counsel and testified to discussion at the opening session of March 1, 1977. He recalled Roberts speaking of multiparty bargaining and that this led him to understand a single settlement would be the culmination of negotiations. He buttressed this by recalling how Roberts had explained that, even if a given local did not ratify a settlement, the employer would "have an agreement with all the local unions" and that with this assurance King appeared satisifed. Grami testified that on this occasion Roberts was specifically representing Local 174 along with other Teamsters entities.

Roberts' version of the March 1, 1977, meeting is that he fulfilled the client needs of the moment by citing *General Electric Company*, 412 F.2d 512 (1969), as the fundamental authority on which a proposed course of coordinated bargaining would commence. Roberts parried King's initial surprise by terming the procedure a "better way" than to ponderously approach the entire wholesale grocery negotiations through a continuous pattern of "three separate negotiations" which would repetitiously cover common language. Roberts recalled emphasizing that the process left room to negotiate "individual problems as to each local union" as such would conveniently arise. Roberts testified that King asked for and took a caucus, after which he wanted to meet only with Weinmeister and Roberts. When these three were together privately King said that the exchanges of the day had resulted in his having "learned something about coordinated bargaining," to which the association was agreeable. Roberts added that the notion of separate contracts was specifically acknowledged, and that Weinmeister had added how simultaneous offers from the association would motivate the union side to attempt making all necessary ratification votes on the same day. Cooper was present at the meeting of March 1, 1977, and acknowledged that Roberts spoke as a representative of Local 174. Cooper testified that Weinmeister initiated discussion of negotiating ground rules by proposing coordinated bargaining and this became the mutually chosen course. Cooper did not recall any particular remarks of Roberts, any details of the association seeming to initially resist the idea, or whether a "one big strike or one big agreement" statement had been made. However, Cooper does expressly contradict Grami's testimony that Roberts had voiced the principle of the employer having a contract with all locals even though one might not vote to ratify. Cooper characterized Grami's role in the 1977 negotiations as purely being that of a spokesman but without authority to bind Local 174 to any agreement and without any "lead" role in the process.

On this general basis, the 1977 negotiations ensued[6] and ultimately, in June of that year, representatives of principal locals involved agreed in writing to recommend acceptance of a "last and final proposal" from the association.[7] Ratification was affirmative in all bargaining units, and from this a 1977 agreement was consummated effective to dates in late March 1980 for the drivers' unit and to late April 1980 for the warehouse unit.

After timely exchange of reopening notices, the parties prepared for 1980 negotiations.[8] The first session was set for March 10, a date on which Local 174 delivered its comprehensive draft of "Demands and Proposals" for the new contract. More importantly, there were verbalisms between the parties in the course of this meeting.[9] In this setting King testified that during the initial meeting of March 10, at which Cooper was present, Weinmeister reiterated the Teamsters interest in coordinated bargaining which had seemingly worked well in 1977. He also confirmed that Grami would be spokesman throughout, adding, according to King, that this would include "authority to represent all the Locals involved." Weinmeister was then to have explained that the objective was one settlement for all locals except for necessary attention to local issues, and all involved would vote at the same time. King recalled how, at that point, Herbert Engdahl, vice president of operations for West Coast Grocery, asked what would occur should there be a particular rejection by members. King testified that Weinmeister's response was that, if a majority of the units would vote to ratify, then the employers could consider they had a contract for the matter would become an "internal union problem."

This general pattern of testimony was repeated by Bruscas along with the General Counsel's witnesses, Gary Carlson, staff negotiator with Safeway Stores in the Seattle area, and William Evans, operations manager for American-Strevall. Additionally, Al Lamp, employee relations manager for Associated Grocers as of March 10, testified that he was present at the negotiating meet-

[6] In the process Grami succeeded to Weinmeister's original role as chief union spokesman.

[7] The quoted phrase associates to art. XII of the Teamsters constitution wherein a "final offer of settlement" as so judged by a local union's executive board must be submitted to the membership and can only be rejected by a two-thirds vote. This art. also contemplates pooled ratification voting when more than one local "is involved." The particular document just described was signed by Cooper, Robert Thurston, Robert Pavolka, and Weinmeister for Locals 174, 313, 599, and 117, respectively. It was also countersigned by King on behalf of association members.

[8] All dates and named months hereafter are in 1980, unless expresaly shown otherwise. Occasionally the year 1980 shall be repeated for emphasis.

[9] Federal Mediation and Conciliation Service had gathered the parties preliminary on February 4, at which time Grami, speaking for the Teamsters, advised King and other employer representatives that they desired to again engage in coordinated bargaining with himself to be spokesman.

ing on that date and not only recalled the above-quoted (internal union problem) remark of Weinmeister, but had taken notes at the time which he presently recalled as including a recordation of Weinmeister's statement that "if a majority of the employees voted to ratify the contract, then the contract was ratified."[10]

Grami's testimony was that Weinmeister's composite response to a series of questions posed at the time by King was that, if only a majority of the Teamsters locals ultimately ratified, this would become an internal union problem but that a strike would not ensue. Grami could not specifically recall that Weinmeister had enlarged on the prognostication by adding that the situation posed would also mean that the employers had a contract. Similarly, Cooper recalled only that Weinmeister used the "internal union" words at that point. Cooper agreed with King that Weinmeister characterized the general mode of the bargaining as being "like last time."

From this is a laborious sequence of negotiations followed over a course of 16 more meetings that led to August 14. By this time the Teamsters locals had obtained strike authorization from their members and issues were well crystallized. Aside from typical economics and language matters, certain interunion rivalries were also having an effect. This manifested on two levels in that Local 117 was dominant in members respecting this component of the association, while Local 174 was a major traditional drivers unit readily thought of as a pillar of Teamsters unionism and enjoying a traditional wage differential to confirm the distinction. The other rub was in regard to interface between work jurisdiction of Local 174 and Tacoma-based brethen of Local 313, particularly as the industry had gravitated into distribution practices that favored Local 174. This was a so-called work preservation clause, one that Local 313 initially sought to "clarify" and as late as May 20, was proposing strong protective-type language in a recapitulation of pending "Local Union Issues" that were outstanding at the time.

Local 174 was essentially seeking success in three areas; these being health and welfare improvements, an avoidance of contract "take-outs (or "take-aways") in regard to straight time for Sunday work, and an avoidance of break-in rate for new employees as low as 80 percent. Cooper testified that in regard to the work-preservation friction between his members and Local 313, he had met privately with Grami during the course of negotiations and advised that Local 313 was overreaching and should be told so which Grami agreed to do.[11]

A "Last and Final Position" of the employers evolved on August 14, and this was again, as in 1977, deemed by executive boards involved the "final offer of settlement" within intendment of the Teamsters constitution.[12] This 10-page document actually comprised three parts, applicably respectively to the warehouse locals, then to Local 174, and finally to Local 313. As to Local 174, it represented an adherence to desired "take-outs" respecting straight time work by drivers as performed during a second Sunday afternoon shift, and with respect to an 80-percent break-in rate for new employees over 60 days. It also failed to contemplate the health and welfare improvements sought by Cooper throughout the negotiations, consistent with his initial written proposals back in March.[13]

Voting then ensued among the Teamsters members on August 17, with the result that Local 174 had 286 votes to reject and 7 votes to accept. This sentiment was not only resounding but well within the Teamsters constitutional provision for a valid rejection, and in consequence Cooper set an apparent work stoppage in motion.[14] Members of his local began to engage in prestrike preparation at Safeway Stores' premises, and by mid-morning of August 17, their activities were notoriously known among key persons involved in the bargaining. This was manifested particularly by telephone contact from Grami to King as matters unfolded. Meanwhile Cooper was maneuvering behind the scenes with Weinmeister, and otherwise within the Teamsters chain of command, in respect to an admittedly "mess[y]" situation. The picketing had mixed success, particularly because Weinmeister had no inclination to support it since this would have undercut his own position of "establish[ing] that I (Weinmeister) had a contract." Further, the state of things at that point in time was not only that Local 174 was without strike *sanction* within normal Teamsters protocols, but at the gathering on August 17, when all ratification voting took place, it was made clear to Cooper by Weinmeister that such strike sanction was unlikely to be obtained.

The parties met again under FMCS auspices on August 21, at which point it developed that the association was contending it had a contract with Local 174. The upshot was discontinuance of picketing on that date and filing of the charge upon which this litigtation is based. The body of this 8(b)(3) charge quoted Grami as having repeatedly said "the Union required all Locals to abide by a vote of the majority." On September 16, King wrote to Cooper enclosing a complete copy of what the association believed was its 1980–83 contract with Local

[10] Lamp explained that this notetaking was done at the nudging of Bruscas, his superior at the time, in the immediate moments after Weinmeister's utterances. In this he is consistent with Bruscas, who separately testified that he had directed Lamp to capture the seemingly important concession of Weinmeister that if "the majority of the Locals agreed, we would have the agreement and they would have an internal Union problem."

[11] In the course of these protracted negotiations Local 313 lost an arbitration case on the point, thus tending to vindicate Cooper's contentions on the subject.

[12] This document represented a refinement of the status of employer proposals in an earlier comprehensive recap dated August 4.

[13] This final offer also confirmed various language provisions as to hours, discharge for cause and grievance procedure, plus confirming a $3-per-hour increase in wage rates over the proposed 3-year term of the contract. Significantly, the keys passage on wage economics included the following sentence: "The retroactive pay of approximately seven hundred-seventy-five dollars ($775) (plus overtime worked) is contingent upon settlement without economic action."

[14] The other two units had voted to accept. However, dynamics of the moment caused business agent John Coucett and Pavolka on behalf of their Tacoma area Locals 313 and 599, respectively, to post notices assuring their own members that Local 174 did not plan to establish any picketing at West Coast Grocery and that since any such activity is not authorized or sanctioned "by anyone, including Local 174" the members were directed not to honor "any picket lines so established unless later told otherwise."

174, asking that a copy be signed and returned. Consisent with his own position, Cooper has declined to do so.

This case has many trappings to what is an esentially narrow controlling issue of fact. The principle involved is whether or not Local 174 has manifested an unequivocal intention to be bound by multiparty bargaining in the sense of casting itself with other related labor organizations and relinquishing to a common effort its own customary, if not here traditional, authority to contract. See *Joseph McDaniel d/b/a Custom Colors Contractors*, 226 NLRB 851 (1976); *Rock Springs Retail Merchants Association*, 188 NLRB 261 (1971). While some surrounding factors bear on this issue, the essential question is whether composite verbalisms of March 1, 1977, and March 10, *1980*, amounted to such a manifestation. I readily find they do not, and for this reason Cooper's determination to resist the contention of Local 174 now being under contract is not only correct, but a salute to his own resolute instinct while so many others wallowed in confusion, self-deceit, false hope, and a generally unschooled outlook on this rather odd illustration of the nuances inherent in sophisticated collective bargaining.

Credibility as between the several witnesses must first and critically be resolved. Here, from standpoints of demeanor, bias, consistency, impressiveness of key elements in recall, and intrinsic probabilities of fact, I thoroughly credit the testimony of both Roberts and Cooper. I do so in this order because Roberts was the architect of what was essentially a routine lawyerly resolution of client needs; namely, a better way for the fractious personalities atop these particular Teamsters locals to get along and generally spend more time and energy confronting the collective employers rather than confronting within themelves. On March 1, 1977, Roberts plainly advanced *General Electric* as a blueprint for action, and accurately spelled out its meaning including that it suggested an efficient, productive, and progressive way for an employer association to deal with more than one local union in a situation where simultaneousness could largely substitute for repetitiveness, and particularized issues could be dealt with in appropriate, separate fashion. Had these essential principles been understood from the beginning by King, I do not see how this controversy would have risen. The essential hitch seems to have been that it was not tested in 1977 and King's erroneous impression flourished over the next 3 years to the point that an unrelated remark of Weinmeister dealing with strike sanction politics was eagerly seized upon as an afterthought in a spurious attempt to forge a contract relationship where none in fact existed. Since Weinmeister did not testify, my characterization of his remark is founded on crediting Cooper who persuasively recalled that on March 10, *1980*, Weinmeister spoke *only* of coordinated bargaining without adding that one settlement would apply to all locals or that majority vote among the locals was binding on all. It is also notable that Cooper credibly recounted Grami's remark to King on August 14 that one of the locals was plainly dissatisfied with its proposal from the association. There is thus a fatal gap in the General Counsel's case which is that Cooper, as the only authority figure for Local 174 as opposed to Grami's role as spokesman for convenience, never assented to be jointly bound by word, deed, or acquiescence.

While the *General Electric* case involved various International unions banding together to better deal with a giant employer, the court's adoption and description of coordinated bargaining leave ample room to adroitly apply the process to these wholesale grocery negotiations. This is precisely what Roberts did, and any misunderstanding must be assigned as the fault of King for key language of a decision leaves no room for doubt. Thus, the background in *General Electric* was one in which unions were dissatisfied with "the results of their prior separate efforts," had previously sought "joint *informal* discussions on various matters" (emphasis supplied), and disclaimed any intention of creating "joint bargaining." The court skirted an intriguing, and here highly relevant, question of whether the state of the law was that several unions could seek an arrangement to use a certain joint bargaining demand as a *condition* of "separate but substantially simultaneous negotiations." The court relegated this point to another untouched area of "the extent to which the law permits cooperation in bargaining among unions or employers," and held that these matters would be better adjudicated when a case arose in which improper "motives" were shown, or conflict from outside influences made "mixed-union committees" suspect. The court's concluding rationale, one that was Robert's point of departure and was reasonably implicit in all that he said on March 1, 1977, was that an employer could not lawfully refuse to bargain with a union (there the IUE) so long as it sought to bargain solely on behalf of those employees it exclusively represented and notwithstanding that members of other unions were on its bargaining committee.

I find King's testimony to be particularly unreliable and believe that his own partisan misperceptions have corrupted all other evidence upon which the General Counsel relies. It is first significant that Roberts credibly testified how the *General Electric* case was cited to King, and shortly thereafter he pronounced himself educated on the subject. However 4 years later King admitted to "honestly [not] know[ing]" what coordinated bargaining meant. Furthermore, counsel for the General Counsel even subtly attributed inattention to King at the instant hearing in terms of whether Robert's contemporaneous testimony was that the term "joint bargaining" had been uttered back in 1977. More importantly King's testimony was simply hesitant, imprecise, and utterly failed to establish the key element of any agent for Local 174 advancing an unequivocal intent to be bound jointly to a tentative industrywide contract.

Comparable infirmities attached to the testimony of Bruscas, Ravenscraft,[15] and, particularly, Lamp. I am

[15] A component of Jt. Exh. 2 is the 1971–74 contract between the association and Local 313 covering West Coast Grocery. Ravenscraft's conformed signature appears on this document, next to the astonishing inadvertence of showing "Local Union No. 174" as the contracting party. Participation in such inattentiveness does not bespeak the care to be expected of one involved with labor-management intricacies, nor does it inspire confidence in Ravenscraft's reliability as a witness, particularly where an eager allegiance to one party permits bending of truth.

satisfied that they cannot be credited in recalling that Weinmeister announced a "majority" rule, whereunder Local 174 would possibly be bound to whatever proposed contract was ratified in other units. Conversely, each of these witnesses displayed too eager a desire to buttress institutional objectives, and were otherwise unpersuasive on demeanor grounds.[16]

The swing witness is Grami, for while Cooper's veracity is high, he simply was not that attuned, nor need he have been, to the miscellaneous rhetoric of "big table" experiences. Although called by the General Counsel, Grami was a certifiably "political" person in the Teamsters domain and this characteristic colored his testimony. In this context the General Counsel paid a dear price for what Grami delivered. His opening recollection concerning March 1, 1977, was of how Roberts projected that any settlement yielded by the negotiations about to commence would not be "preclude[d]" by one of the bargaining units declining to ratify. Grami's testimony from that point onward was essentially all downhill with respect to lending any support to key allegations of the complaint. First of all, he undermined the General Counsel's theory of unequivocalness by opining that the "loosely . . . used" terms coordinated bargaining, multiunion coordination, area and joint bargaining do not "frankly . . . tell you what you want to know." He defined the role of spokesman as being a communicator of "unions[']" positions, and conceded that with respect to the 1980 negotiations Cooper had never given him the *authority* to *take* positions for Local 174. Related to this was his testimony that Cooper had reserved the right to a separate vote on any employer offer, and that this was said "fairly early" in the negotiations to the employers. He repudiated the quoted phraseology of the unfair labor practice charge in which he was supposedly to have said that all locals were required "to abide by a vote of the majority" and conversely testified that he had never in so many words told the employers that Local 174 would be bound by a majority vote. Were all this not enough he retraced Weinmeister's remarks in opening the 1980 negotiations recalling a description of ground rules wherein ratification voting would be "along lines of separate contracts, and he could not recall Weinmeister adding to the crucial "internal union problem" phrase that the employers would have a contract.[17] I have considered Grami's backtracking under further examination whereby he lamely fell into ambiguous phrasing of "everything we were doing was telling them [employers]," and how the "total[ity]" of words might suggest a "majority" rule concept. I reject these afterthoughts as mere unworthy attempts to remain centrist in a more than two-way power struggle.

The General Counsel and the Charging Party have also contended that happenings in the soft drink industry negotiations of this vicinity in both 1977 and 1980 shed further light on the case. As to this industry, the production bargaining units are those of bottling, loading, and local distribution employees represented by Local 117 and totaling about 1,200 persons. Local 174 has a small unit of 65 drivers and in 1977 Cooper did in fact determine to "piggy-back" the main bargaining of Local 117. When his own members overwhelmingly rejected the 1977 contract he battled off any moves toward a work stoppage by sheer dint of member discipline. Sobered by this experience he then determined for 1980 soft drink negotiations and onward that notwithstanding his unit's relative smallness the realities of internal union politics were such that it made better sense to allow members a free hand in the ratification process, even though rejection would be futile because any work stoppage by such a group would be unsanctioned, unsupported, or both. In 1980 Local 174 members voted 43 to 23 to reject the settlement also. However, this result was one vote short of the Teamsters two-thirds constitutional rule, and thus distinctions between Cooper's 1977 and 1980 position never came to a test. The entire subject of soft drink negotiations fails to add sufficient weight to affect the issue. Ironically, Carl Wojciechowski, the association's chief negotiator for soft drink industry employers, equated "internal union problems" with separate voting and separate contracts.

The epilogue of this case is that while Cooper sat phlegmatically through both sets of negotiations, he was acutely attuned to essence of the bargaining process and its significance both to his members and his own political survival in the sophisticated challenge of maintaining office with a major Teamsters affiliate. Conversely, association representatives were naively susceptible to posturings, idle mouthings, and the tactical frills of these complex dealings. Granted, they were also acutely concerned with economics sought from them, and with attainment of the most favorable language provisions to best meet any current conditions. Yet this left them ill-equipped to recognize the potential for misunderstanding as each side groped through the new coordinated approach to bargaining for the industry. In both kind and degree the fledgling phenomenon was highly experimental in this setting, fundamentally different from all that had been so customary before, and permeated with nuances of internecine competitiveness and jealousies within the sister affiliates themselves. The very crux of the case is that Cooper was by configuration of events forced into a doomed power play[18], which the association attempts to seize upon as leverage for deferring retroactive pay increases and benefits gained by the other Teamsters bargaining units. I am necessarily unconcerned with the equity of such a loss should the driver members represented by Cooper find it a consequence from which they cannot escape,[19] but in truth this thought never need be reached because his strategy was solidly founded in fact and law, if not instinct itself. Had

[16] On this same basis and for reasons of demeanor I also discredit the testimony of rebuttal witnesses Carlson and Evans.

[17] This point reflects Cooper's credible recollection, and is corroborated both directly by Doucett and obliquely by Engdahl.

[18] It should be remembered that he had suppressed strike action by his members of the soft drink industry in 1977, a decision making even more inevitable that the cathartic appeal of a strike need soon be satisfied elsewhere to maintain his legitimacy as a leader.

[19] It must be remembered too that the scheme of labor-management law provides even harsher punishment for employees subject to reckless or inept union leadership. Under Sec. 8(d) of the Act their status as employees may dissolve by operation of law whenever stautory steps established to place orderliness in the contract renewal process are flaunted.

the General Counsel not chosen to adopt King's wishful thinking as to what the entire experience of March 10, *1980*, constituted, viewed in light of the 1977 negotiations, and as parroted by the several witnesses whose *effective* ability to recall I have discredited, this case presumably would not have been prosecuted. The overall probative evidence utterly fails to show under governing legal principles of association-type bargaining that Local 174 has reached and thereafter refused to sign a collective-bargaining agreement.

[Recommended Order for dismissal omitted from publication.]